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CHARLOTTE, NC

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US District Court
Western District of NC

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL ACTION NO.: 3:11-CV-65-GCM

THE BANK OF NEW YORK AS TRUSTEE
FOR THE NOTEHOLDERS CWABS II,
INC., LFT 2005-04,

Plaintiff,

vs.

KHARA INGRAM AND KYRON INGRAM;
NATIONWIDE TRUSTEE SERVICES, INC.
SELECTIVE DEVELOPMENT, LLC.;
UNITED STATES DEPARTMENT OF
HOUSING & URBAN DEVELOPMENT;
ATREUS COMMUNITIES GROUP f/k/a
HOMELIFE COMMUNITIES GROUP f/k/a
HOMELIFE COMMUNITIES GROUP OF
CHARLOTTE, INC.; LVNV FUNDING,
LLC.,

Defendants.

ORDER


The matter has come before the Court upon Plaintiff's motion for order of resale of real property [DE-28]. The Substitute Trustee, Nationwide Trustee Services, Inc., acting as Commissioner per the Court's order of August 22, 2012 [DE-27] conducted a judicial foreclosure sale on April 18, 2013 of the real property located at 3608 Lukes Drive, Charlotte, North Carolina 28216 ("the Real Property"), said Real Property being, in part, the subject of the above-styled action. Plaintiff was the high bidder at the April 18, 2013 judicial foreclosure sale [DE-28, Exhibit "B"]. The notice of the judicial foreclosure sale, however, contained errors, particularly as to the case number in the above-styled action and the identification of the Court from which the judgment for the judicial foreclosure sale emanated [DE-28, Exhibit "A"]. The notice was not in compliance with N.C. Gen. Stat. § 1-339.15(1) as it did not properly "refer to the order authorizing the sale" and, therefore, the judicial foreclosure sale conducted on April 18, 2013 was rendered defective.

F.R.C.P. Rule 60(b)(1) and (6) provide, in relevant part, that "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for ... mistake, inadvertence, surprise, or excusable neglect ... or; any other reason that justifies relief ..." *Id.*

Both mistake and good cause justifying relief having been demonstrated to set aside the April 18, 2013 judicial foreclosure sale, Plaintiff's motion is hereby GRANTED, and it is hereby ORDERED that:

1. The April 18, 2013 judicial foreclosure sale be, and is hereby set aside; and,
2. Priority Trustee Services of NC, L.L.C. be, and is hereby, appointed as Commissioner by the Court and authorized, pursuant to N.C. Gen. Stat. § 1-339.4(1), to conduct a judicial resale of the Real Property pursuant to the Court's order of August 22, 2012 [DE-27].

This the 24th of June, 2013.



GRAHAM C. MULLEN
Chief United States District Court Judge

DISTRIBUTION LIST

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